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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 490

FRANK L. YOUNG COMPANY, PETITIONER,

vs.

McNEAL-EDWARDS COMPANY.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

JOHN G. PALFREY,
W. BARTON LEACH,
CHARLES F. ALBERT,
Counsel for Petitioner.

(35,412)

INDEX.

Subject Index.

Petition for writ of certiorari:	Page
Summary statement of the matter involved	1
Reasons for the allowance of the writ	6
Prayer for writ	7
Affidavit of counsel	7

Case Cited.

Aldrich v. E. W. Blatchford & Co., 175 Mass., 369	3

Statute Cited.

Massachusetts General Laws, C. 227, Sections 2 and 3	3

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vs.

McNEAL-EDWARDS COMPANY, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Justices of the Supreme Court of the United States:

The petition of Frank L. Young Company respectfully shows:

Your petitioner is a Massachusetts corporation with its principal place of business at Boston, Suffolk County, Massachusetts, and the respondent is a Virginia corporation, having no place of business in Massachusetts.

In January, 1922, your petitioner and the respondent entered into a contract (Record, pp. 18-20) by which your petitioner agreed to purchase and the respondent agreed to sell a quantity of "Prime A" crude men-

laden fish oil, the oil to be shipped in the respondent's drums, which your petitioner was to return freight prepaid. The oil was shipped in January, 1922, and the contract price of about $18,000 was paid in March, 1922.

Your petitioner examined and tested the oil before removal from the drums and within a reasonable time made claim against the respondent for breach of warranties of quality with regard to the oil. The respondent refused to recognize claims with regard to the oil and demanded immediate return of the drums. On September 15, 1922, the drums were attached by your petitioner in an action against the respondent to recover damages for breach of warranty.

In March, 1923, the respondent, through Asa P. French, counsel of record, brought an action against your petitioner in the United States District Court for the District of Massachusetts, alleging the wrongful detention and conversion of the drums. This action was tried with that now in question and resulted in a judgment for the respondent for one hundred dollars' damage for the unreasonably long detention of the drums.

While the aforesaid action was pending, your petitioner commenced the present cross-action to recover damages for breach of warranty of the oil and caused service to be made upon Asa P. French, "as said French is attorney of record" of the respondent. The previous action in which the drums were attached was discontinued. The service upon respondent's counsel was made pursuant to the provisions of Massachusetts

General Laws, chapter 227, sections 2 and 3, as follows:

> "SECTION 2. If an action is brought by a person not an inhabitant of the commonwealth or who cannot be found herein to be served with process, he shall be held to answer to any action brought against him here by the defendant in the former action, if the demands are of such a nature that the judgment or execution in the one case may be set off against the judgment or execution in the other. If there are several defendants in the original action, each of them may bring such cross-action against the original plaintiff and may be allowed to set off his judgment against that which may be recovered against him and his co-defendants in like manner as if the latter judgment had been against him alone.
>
> SECTION 3. The writ in such cross action may be served on the attorney of record for the plaintiff in the original action, and such service shall be as valid and effectual as if made on the party himself in the commonwealth."

These statutes have been held by the Supreme Judicial Court of Massachusetts to be part of the general law of set-off and counterclaim, and the mode of service therein provided has been held to give reasonable notice. *Aldrich v. E. W. Blatchford & Co.*, 175 Mass. 369.

The respondent, appearing specially, filed a motion to dismiss and a plea in abatement which, after hearings before Lowell, District Judge, were respectively denied and overruled. (See memorandum, Record, p.

81.) Thereupon the respondent filed an answer of general denial, with certain affirmative pleas. At the trial the jury made a special finding that the oil was not of the quality and grade called for by the contract and returned a verdict for your petitioner in the sum of $10,730.17 (Record, p. 14). The respondent then filed a motion in arrest of judgment on the ground that the court never acquired personal jurisdiction of the respondent. This motion was heard by Morton, District Judge, and overruled. Thereupon, judgment was entered for your petitioner and the respondent duly appealed to the United States Circuit Court of Appeals for the First Circuit.

The appeal came on to be heard in the Circuit Court of Appeals before Bingham, Anderson, and Wilson, Circuit Judges, and on November 12, 1929, that court rendered its decision remanding the case to the District Court with instructions to enter judgment for the respondent. The decision (Record, pp. 87-91) proceeded on the theory that the jury's finding in the action brought by the respondent that the drums were detained an unreasonable length of time constituted a wilful breach of contract which was a complete bar to any recovery by your petitioner for the breach of warranty. The question of jurisdiction over the respondent was not considered.

Your petitioner duly presented a petition for rehearing, urging that the court's decision was unsupported by the record and was in conflict with general commercial law as enunciated in the decisions of this Honorable Court, in the courts of England, and in other Federal and State courts, all holding that a

breach of a collateral provision of the contract is not a bar to recovery thereon, but goes merely in mitigation of damages.

This petition was granted and the case was again argued before the same judges. Thereafter, on July 1, 1930, the court rendered its present decision, Anderson, J., dissenting, ordering the case dismissed for want of jurisdiction. The basis of this decision is summarized in the opinion by Bingham, J.:

> "The statute of Massachusetts (c. 227, ss. 2, 3, 4), if upheld and enforced in the federal court for the District of Massachusetts, would contravene the Acts of Congress in two important particulars. First, it would abridge the right given a non-resident to sue in that court by making the exercise of the right conditional upon its waiving personal service of process upon it, in case any citizen or citizens of Massachusetts, made defendants in its suit, should conclude to bring independent actions against it. And second, it would enlarge the jurisdiction of the federal court in the District of Massachusetts, as to suits brought against the non-resident by doing away with the requirement of personal service of process and substituting in its place the constructive service provided for in the State statute. For these reasons we think the statute of Massachusetts cannot be upheld and enforced in the District Court for Massachusetts, whether its enforcement would or would not contravene the due process clause of the Fourteenth Amendment, which the Supreme Court in *Riverside Mills v. Menefee, supra,* its latest decision on the question, held that it would."

The court further held that the statute was not a reasonable extension of the law of set-off in spite of the decision of the highest State court so construing it.

A certified copy of the record in the Circuit Court of Appeals is herewith furnished as part of this application.

Your petitioner respectfully prays that this petition may be allowed for the following reasons:

1. The decision of the Circuit Court of Appeals nullifies the effect of an important Massachusetts statute that has been in continuous and useful operation for more than a century.

2. The decision of the Circuit Court of Appeals, if followed, also nullifies similar statutes of six other States.

3. Of the seven United States judges who have passed directly upon the question here involved, only the two majority judges in the Circuit Court of Appeals have decided against your petitioner's contention.

4. The decision of the Circuit Court of Appeals is in conflict with the interpretation of the same statute adopted by the Supreme Judicial Court of Massachusetts.

5. The Massachusetts statute is properly applicable in the District Court for the District of Massachusetts and is not in conflict with any Act of Congress.

6. The appearance of justice to your petitioner under the peculiar circumstances of this case requires review of the decision of the Circuit Court of Appeals.

In support of these contentions the petitioner respectfully submits its brief herewith.

WHEREFORE your petitioner prays that this Honorable Court will grant its writ of certiorari, directed to said Circuit Court of Appeals for the First Circuit, requiring the complete record of this cause in said court to be certified to this Court in accordance with the Act of Congress so providing, and that this Court will thereupon proceed to review the case, correct the errors therein, and give your petitioner such other and further relief as to the Court may seem proper in the premises.

FRANK L. YOUNG COMPANY,
By JOHN G. PALFREY,
Attorney and Counsel for Petitioner.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

BOSTON, *September* 15, 1930.

I, John G. Palfrey, being duly sworn, say that I have been of counsel for Frank L. Young Company, the petitioner herein named; that I have read the petition by me subscribed, and that the facts stated therein are true to the best of my knowledge and belief.

JOHN G. PALFREY.

Subscribed and sworn to before me this fifteenth day of September, 1930.

[SEAL.] ROBERT J. PLUNKETT,
Notary Public.

My commission expires May 22, 1936.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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INDEX.

Subject Index.

	Page
Opinions below	1
Jurisdiction	2
The question presented	3
Statement of the case	4
Specification of errors	6
Argument	6
1. The decision of the Circuit Court of Appeals nullifies the effect of an important Massachusetts statute that has been in continuous and useful operation for more than a century	6
2. The decision of the Circuit Court of Appeals, if followed, also nullifies similar statutes of six other States	8
3. Of the seven United States judges who have passed directly upon the question here involved, only the two majority judges in the Circuit Court of Appeals have decided against your petitioner's contention	9
4. The decision of the Circuit Court of Appeals is in conflict with the interpretation of the same statute adopted by the Supreme Judicial Court of Massachusetts	10
5. The Massachusetts statute is properly applicable in the District Court for the District of Massachusetts and is not in conflict with any act of Congress	12
6. The appearance of justice to your petitioner under the peculiar circumstances of this case requires review of the decision of the Circuit Court of Appeals	14
Conclusion	16

Table of Cases Cited.

Aldrich v. E. W. Blatchford & Co., 175 Mass., 369	11
Arkwright Mills v. Aultman & Taylor Machinery Co., 128 Fed., 195	7, 9, 11, 13, 15
Arkwright Mills v. Aultman & Taylor Machinery Co., 145 Fed., 783	9
Barrows Steamship Co. v. Kane, 170 U. S., 100	13

Page

Citizens Bank v. Opperman, 249 U. S., 448 2
Collins v. Brown, 19 Idaho, 360, 364 9
Chicago & N. W. Railway v. Lindell, 281 U. S., 14, 17 ..... 7, 14
Coleman v. American Warp Co., 235 Fed., 531, 536 10
Champlin Refining Co. v. Gasoline Products Co., 29 Fed., 2d, 331, 338 ..... 11, 13
Dushane v. Benedict, 120 U. S., 630 13
Dotson v. Kirk, 180 Fed., 14 13
Elmendorf v. Taylor, 10 Wheat., 152, 159 12
Gregory v. Pike, 29 Fed., 538 13
Jones v. Prairie Oil Co., 273 U. S., 195 12
Kelley v. Smith Co., 196 Fed., 466, 470 13
Morse v. United States, 270 U. S., 151 2
Partridge v. Insurance Company, 15 Wall., 573, 579 ..... 7, 14
West v. Aurora City, 6 Wall., 139 13

TABLE OF STATUTES.

Act of Congress of February 13, 1925, C. 229, Sections 1 and 8. 2
Alabama Civil Code, Section 10181 9
California Code of Civil Procedure, Section 1015 9
Gloria, The, 286 Fed., 188, 192 14
Idaho Compiled Statutes (1919), Section 6699 9
Montana Code of Civil Procedure, Section 9151 9
Massachusetts General Laws, C. 227, Sections 2 and 3 ..... 3, 5, 6, 8
Maine, Revised Laws of, 1916, C. 86, Section 80 8
Rhode Island, General Laws of, Sections 4927 to 4929, C. 338, Sections 14 to 16 8
United States Code, Title 28, Sections 347*a* and 350 2
Title 28, Section 41 12
Title 28, Section 112 12
Title 28, Section 724 13

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McNEAL-EDWARDS COMPANY, RESPONDENT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions Below.

The opinion of the Circuit Court of Appeals upon rehearing dealing with the jurisdictional question here presented is as yet unreported and appears at pages 98 to 114 of the Record. The dissenting opinion of Anderson, J., filed September 16, 1930, appears at pages 114 to 116 of the Record. The memorandum opinion of Lowell, District Judge, denying the motion to dismiss on jurisdictional grounds is unreported

and appears at page 81 of the Record. The motion in arrest of judgment on the same ground and denial thereof by Morton, District Judge, appears at pages 15 and 16 of the Record. The first opinion of the Circuit Court of Appeals (now withdrawn), dealing primarily with questions of contract and not with questions presented on this petition, is reported in 35 Federal, 2nd, 829, and appears at pages 87 to 91 of the Record.

Jurisdiction.

The judgment of the Circuit Court of Appeals on rehearing was entered on July 1, 1930 (Record, p. 94). This petition is brought pursuant to Act of Congress of February 13, 1925, Chapter 229, Sections 1 and 8; United States Code, Title 28, Sections 347A and 350. The petition is properly brought within three months of the date of decision on rehearing.

Morse v. United States, 270 U. S. 151.
Citizens Bank v. Opperman, 249 U. S. 448.

Careful examination of the opinion of the Circuit Court of Appeals indicates the possibility of doubt whether that court decided that the Massachusetts statute was unconstitutional or merely that it was inapplicable in the Federal courts. We believe that the court decided merely that the statute was inapplicable in the Federal courts, even though the effect of this decision is to render the statute a dead letter. In view of the possibility of our being wrong in this belief, counsel for the petitioner directed an application for an appeal to Bingham, Circuit Judge. The applica-

tion was denied by Bingham, J., whose statement in denying the application apparently confirms our belief. Bingham, J. said:

> "The question of the validity or constitutionality of the state statute is not presented in the case and was not decided. This being so, no right of appeal to the Supreme Court exists and the application for an appeal is denied."

The Question Presented.

The respondent, a nonresident of Massachusetts, brought suit against the petitioner in the United States District Court for the District of Massachusetts. The petitioner brought the present cross-action against the respondent relating to the same contract as the respondent's original action. In this cross-action the petitioner sought to obtain jurisdiction over the respondent by service upon his attorney of record in accordance with Massachusetts General Laws, c. 227, ss. 2 and 3. These sections read as follows:

> "SECTION 2. If an action is brought by a person not an inhabitant of the commonwealth or who cannot be found herein to be served with process, he shall be held to answer to any action brought against him here by the defendant in the former action, if the demands are of such a nature that the judgment or execution in the one case may be set off against the judgment or execution in the other. If there are several defendants in the original action, each of them may bring such cross action against the original plaintiff and may be allowed to set off his judg-

ment against that which may be recovered against him and his co-defendants in like manner if the latter judgment had been against him alone.

"SECTION 3. The writ in such cross action may be served on the attorney of record for the plaintiff in the original action, and such service shall be as valid and effectual as if made on the party himself in the commonwealth."

The question is whether these sections are constitutional and applicable in the United States District Court for the District of Massachusetts and whether jurisdiction over the respondent could thus be obtained by service upon its attorney of record.

Statement of the Case.

In January, 1922, the petitioner bought of the respondent about $18,000 worth of fish oil (Record, pp. 18 to 20) and undertook to return, freight prepaid, the drums in which the oil was shipped. Dispute arose as to the quality of the oil and the promptness with which the drums were returned. The respondent, a Virginia corporation, nonresident in Massachusetts, brough suit in the District Court for the District of Massachusetts to recover for alleged delay in returning the drums. Since the petitioner was a Massachusetts corporation the respondent obtained personal jurisdiction. Thereupon the petitioner (discontinuing a similar suit in which property of nominal value had been attached and was the sole basis of jurisdiction) brought the present cross-action to re-

cover damages for defective quality of the oil in the District Court for the District of Massachusetts (Record, pp. 17-18). Under *Massachusetts General Laws*, c. 227, §§ 2 and 3, heretofore quoted, the petitioner served process upon respondent's counsel of record. Respondent's motion to dismiss on the ground that jurisdiction was not thereby obtained was denied (Record, p. 81). A verdict for $10,730.17 for the petitioner was rendered in the present action and a verdict for $100 in favor of the respondent in its action against the petitioner (Record, p. 71). Respondent's motion in arrest of judgment on the ground that jurisdiction over the respondent had not been obtained was denied (Record, p. 15 and p. 16). On Appeal the Circuit Court of Appeals for the First Circuit reversed the judgment and ordered judgment for the respondent on the ground that petitioner's unreasonable failure to return the drums (which by the jury's verdict damaged respondent $100) as matter of law precluded any recovery by petitioner for respondent's breach of contract (Record, pp. 87 to 91). A petition for rehearing on the ground that the decision of the Circuit Court of Appeals was unsupported either by the Record or by the law (Record, pages 91 to 93) was granted (Record, p. 93). After reargument the Circuit Court of Appeals ordered the case dismissed for want of jurisdiction on the ground that General Laws, c. 227; ss. 3 and 4, were inapplicable to proceedings in the United States District Court for the District of Massachusetts (Record, pages 94 to 114). Anderson, Circuit Judge, dissented. This second decision of the Circuit Court

of Appeals by a divided court raises the question upon which certiorari is primarily sought.

It should be added that the idea that these statutes are inapplicable in this proceeding is entirely original with the two majority judges of the Circuit Court of Appeals. For forty years these statutes have been applied in the District Court for the District of Massachusetts and their application acquiesced in, at least tacitly, by the Circuit Court of Appeals for the First District. Neither counsel questioned the applicability of these statutes.

Specification of Errors.

Petitioner claims that the Circuit Court of Appeals for the First Circuit erred—

First, in holding that Massachusetts General Laws, c. 227, ss. 2 and 3, are not applicable to actions in the United States District Court for the District of Massachusetts.

Second, in refusing to follow the interpretation of said statute by the highest court of the Commonwealth of Massachusetts, which has declared it to be a part of the law of set-off and counterclaim.

ARGUMENT.

1. The decision of the Circuit Court of Appeals nullifies the effect of an important Massachusetts statute that has been in continuous and useful operation for more than a century.

The statutes which now appear as Massachusetts General Laws, c. 227, ss. 2 and 3, were originally en-

acted in 1823 and have remained substantially unchanged since that time. The statute is obviously important. It deals with the situation where a nonresident brings suit within the jurisdiction against a resident over whom personal jurisdiction can be obtained. It compels the pursuing nonresident to submit to cross-actions on the part of the pursued resident. In the absence of some such statutory provision there is no means of litigating both sides of controversies between these parties at once or of avoiding the injustice implicit in permitting the nonresident to bring suit and recover judgment while himself staying beyond the jurisdiction of the court. This Court has expressed its disapproval of "the pernicious doctrine of allowing a citizen of a distant State to institute in these courts a suit against a citizen of the State where the court is held and escape the liability which he laws of the State have attached to all plaintiffs."

Chicago & N. W. Railway v. Lindell, 281 U. S. 14, 17.

Partridge v. Insurance Company, 15 Wall. 573, 579.

As hereafter pointed out, this statute is copied in numerous States. Moreover, it was early decided that this statute was applicable in the Federal courts.

Arkwright Mills v. Aultman & Taylor Machinery Co., 128 Fed. 195 (Circuit Court, District of Mass., 1904).

It has been in salutary use ever since and until the present decision of the Circuit Court of Appeals.

The effect of the decision of the Circuit Court of Appeals is to nullify this statute in every controversy in excess of $3,000. By its terms the statute is applicable only to cross-action of residents against nonresidents. Under the decision of the Circuit Court of Appeals the nonresident, by suing in the Federal court, can prevent a resident plaintiff from enjoying the benefits of the statute. Plainly, a nonresident against whom the possibility of cross-action exists will always choose the Federal courts where the claim is for more than the amount necessary to invoke jurisdiction based upon diversity of citizenship. Even if the nonresident brings suit in the State courts, he will be able to remove the cross-action brought under the Massachusetts statute and thus obtain the benefit of the Circuit Court of Appeals' decision. The nullification of the Massachusetts statute is complete with regard to controversies over $3,000. The increase of diversity-of-citizenship litigation to be expected in the Federal courts is considerable.

2. The decision of the Circuit Court of Appeals, if followed, also nullifies similar statutes of six other States.

The Massachusetts statute is not alone to suffer from the present decision. Maine and Rhode Island have statutes which are practically identical. *Revised Laws of Maine*, 1916, c. 86, § 80. *General Laws of Rhode Island*, §§ 4927 to 4929; c. 338, §§ 14 to 16. Since both Maine and Rhode Island are in the First Circuit, these statutes necessarily fall under the present decision.

Four other states outside the First Circuit have statutes which, although not identical, are substantially the same as the Massachusetts statutes in that they permit service of process upon the attorney for nonresident plaintiffs.

Alabama, Civil Code, Sec. 10181.
California, Code of Civil Procedure, Sec. 1015.
Idaho, Compiled Statutes (1919), Sec. 6699.
See *Collins v. Brown*, 19 Ida. 360, 364.
Montana, Code of Civil Procedure, Sec. 9151.

If the decision of the Circuit Court of Appeals is followed in other circuits, these statutes necessarily also fall.

The statutes in question are essential parts of the procedural system of seven states. The decision sought to be reviewed nullifies them. It is suggested that the question raised is of sufficient importance to justify decision by this Honorable Court.

3. Of the seven United States Judges who have passed directly upon the question here involved, only the two majority judges in the Circuit Court of Appeals have decided against your petitioner's contention.

The applicability of the statute in question in the Federal courts was first considered in *Arkwright Mills v. Aultman & Taylor Machinery Co.*, 128 Fed. 195. In that case Francis C. Lowell, District Judge, ruled that the statute was applicable. On appeal to the Circuit Court of Appeals no question was raised as to the applicability of the statute. *Arkwright Mills*

v. Aultman & Taylor Machinery Co., 145 Fed. 783. The question was next considered in *Coleman v. American Warp Co.*, 235 Fed. 531, 536, where Dodge, Circuit Judge, upheld the applicability of the statute. In the present case Lowell, District Judge, ruled the statute to be applicable by denying respondent's motion to dismiss (Record, pages 7 and 8) and Morton, District Judge, made the same ruling by denying the respondent's motion in arrest of judgment (Record, pages 15 and 16). In the Circuit Court of Appeals, Anderson, Circuit Judge, dissented from the opinion to which this petition refers. It thus appears that of the seven judges who have considered the question, only the present majority in the Circuit Court of Appeals (Bingham and Wilson, JJ.) have ruled against the applicability of the statute. It seems unfortunate that so important a question should be finally decided against the great weight of judicial utterances by reason of the fortuitous circumstance that the minority are the last in time to pronounce upon it. Such a situation seems appropriate for the intervention of the Honorable Court on writ of certiorari.

4. The decision of the Circuit Court of Appeals is in conflict with the interpretation of the same statute adopted by the Supreme Judicial court of Massachusetts.

The Maine and Rhode Island similar statutes are both contained in the general statute concerning set-off and counterclaim. The same is true of the early compilations of Massachusetts statutes, although in the

present compilation these sections are given a chapter to themselves. Furthermore, the Massachusetts Supreme Judicial Court has interpreted these sections as a part of the law of set-off and counterclaim. Speaking through its then Chief Justice, now Mr. Justice Holmes, it said, in *Aldrich v. E. W. Blatchford & Co.*, 175 Mass. 369:

> "* * * we cannot bring ourselves to doubt the validity of the statute in question. If a State law provided that in all cases all cross demands should be open, an entirely possible piece of legislation, no one would doubt the constitutionality of the law. No service would be necessary in order to entitle the defendant to judgment if on a general taking of accounts he came out ahead. We do not suppose that the legislation would be any worse if it made service of a writ on the plaintiff's attorney a condition of the cross judgment."

This interpretation of the Massachusetts statute was followed in the decision under which the statute had been for years applied in the District Court for the District of Massachusetts. *Arkwright Mills v. Aultman & Taylor Machinery Co.*, 128 Fed. 195. Still more significant, the identical Maine statute has been declared *by the same Circuit Court of Appeals, and within two years,* to be part of the law of set-off. *Champlin Refining Co. v. Gasoline Products Co.*, 29 Fed., 2d, 331, 338.

In spite of this uniform method of interpretation of the statute in question, the opinion of the Circuit Court of Appeals declares that the statute is not a part

of the law of set-off (Record, pages 111 to 113), and therefore not applicable in Massachusetts Federal courts. It is suggested that review by this Court is appropriate where there is patent disregard by lower Federal courts of the interpretation placed upon State statutes by the highest courts of the State.

Elmendorf v. Taylor, 10 Wheat. 152, 159.
Jones v. Prairie Oil Co., 273 U. S. 195.

5. The Massachusetts statute is properly applicable in the District Court for the District of Massachusetts and is not in conflict with any Act of Congress.

The argument for the petitioner on the jurisdictional question is forcefully put by Judge Anderson in his dissenting opinion (Record, pages 114 to 116). Only a few additional considerations will be suggested.

The elements of jurisdiction prescribed by Congress are all present in this case. The action is between citizens of different States and the need in controversy exceeds $3,000. *United States Code, Title* 28, *Section* 41. Suit is brought "in the District of the residence of either the plaintiff or the defendant." *United States Code, Title* 28, *Section* 112.

The sole contention is that service of process upon respondent's attorney of record is not sufficient to give the District Court jurisdiction over the respondent. Yet it is familiar law that State statutes rendering the Commissioner of Corporations or other official an agent for service of process upon foreign corporations are effective in the Federal courts, and that in Federal courts suits service upon such statutory agent is suffi-

cient to give jurisdiction. *Barrows Steamship Co. v. Kane,* 170 U. S. 100.

It is beyond question that if the Massachusetts statute had permitted counterclaim in the same action with the right of an affirmative judgment to the counter-claimant, without service of process, the statute would have been applicable without new service of process in the Federal courts both before and since the Conformity Act.

United States Code, Title 28, *Section* 724.
Dushane v. Benedict, 120 U. S. 630.
West v. Aurora City, 6 Wall. 139.
Dotson v. Kirk, 180 Fed. 14.

The Massachusetts statute, however, reaches this result by requiring a new service of process upon the nonresident plaintiff's attorney of record. The difference has seemed to five of the seven judges who have considered it too small to justify the drawing of a distinction.

The statute should be held applicable as a part of the law of set-off and counterclaim.

Arkwright Mills v. Aultman & Taylor Machinery Co., 128 Fed. 195.
Champlin Refining Co. v. Gasoline Products Co., 29 Fed., 2d, 331, 338.

The Massachusetts practice does nothing more than apply to actions at law the long-settled equity practice of permitting substituted service on cross-bills.

Gregory v. Pike, 29 Fed. 538.
Kelley v. Smith Co., 196 Fed. 466, 470.

The holding that the statutes here in question are inapplicable in the Federal courts blasts a formidable hole in the procedural system of the seven States involved. It furthers the "pernicious doctrine of allowing a citizen of a distant State to institute in these courts a suit against a citizen of the State where the court is held and escape the liability which the laws of the State have attached to all plaintiffs." *Chicago & N. W. Railway v. Lindell*, 281 U. S. 14, 17; *Partridge v. Insurance Company*, 15 Wall. 573, 579. It reaches the absurd result of giving effect to statutes which require no more than notice in the original action for the bringing of all manner of cross-claims, while denying effect to statutes which require service of process in the same situation. It tends to defeat the policy of every modern court to secure complete justice in a single court at the same time.

> "A modern court should strive to do complete justice; a partial and incomplete adjudication tends only to protract and complicate litigation to the detriment of all concerned."

Per Mack, Circuit Judge, in *The Gloria*, 286 Fed. 188, 192.

6. The appearance of justice to your petitioner under the peculiar circumstances of this case requires review of the decision of the Circuit Court of Appeals.

This case is perhaps unique in that, although it was twice extensively argued and briefed before the Circuit Court of Appeals for the First Circuit, both opinions of the said court treated only of matters not

raised by either counsel. The first opinion of the Circuit Court of Appeals (Record, pages 87 to 91) reversed the judgment of the District Court on the ground that there had been an intentional breach of contract by the petitioner in retaining the drums in which the oil was shipped until September 15, 1922. No such contention was ever made by respondent's counsel and the record was devoid of evidence to support such a contention. A petition for rehearing based upon the absence from the Record of any such evidence was necessarily granted. Again the case was extensively argued, both counsel assuming on the basis of the decision in *Arkwright Mills v. Aultman & Taylor Machinery Co.*, 128 Fed. 195, and the long-continued practice in the Massachusetts Federal courts that the Massachusetts statute here in question was applicable. No member of the court suggested any doubts on this question. Yet the decision rests upon this point alone, which counsel have never had the opportunity to argue. It is easy to understand the bewilderment of the officers of the Frank L. Young Company, who know that they were awarded a verdict of over $10,000 in the District Court, when they are told that twice they have been defeated in the Circuit Court of Appeals on grounds not raised by opposing counsel and never mentioned by the court until pronouncement of final decision. It is suggested that the appearance of orderly justice to your petitioner in the United States courts renders appropriate the issuance of a writ of certiorari in this case.

Because of the foregoing considerations, and also because of the general importance of the substantive

question of contract law here involved, it is further suggested that review on certiorari should not be limited solely to the jurisdictional question, but should be granted in such form as to permit final disposition in the Honorable Court.

Conclusion.

Wherefore, your petitioner respectfully prays that its petition for writ of certiorari herewith submitted may be granted.

Respectfully submitted,

JOHN G. PALFREY,
W. BARTON LEACH,
CHARLES F. ALBERT,
Counsel for Petitioner.

(6146)